



Patent Application  
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: :  
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Nicholas Sauriol et al. : Group Art Unit: 2617  
:   
Appln. No.: 10/029,857 :   
: Examiner: Keith Ferguson  
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APPEAL BRIEF



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## **I. INTRODUCTION**

In response to the Office Action dated March 16, 2006, finally rejecting pending claims 1-25, Appellant respectfully requests that the Board of Patent Appeals and Interferences reconsider and withdraw the rejections of record, and allow the pending claims, which are attached hereto as an Appendix A.

## **II. REAL PARTY IN INTEREST**

The real party in interest is Nortel Networks Limited, the assignee of the above-referenced application.

## **III. RELATED APPEALS AND INTERFERENCES**

There are no known related appeals or interferences.

## **IV. STATUS OF CLAIMS**

Claims 1-25 are pending in this application. The rejection of claims 1-25 is appealed.

## **V. STATUS OF AMENDMENTS**

No amendments to the claims have been filed subsequent to the final rejection dated March 16, 2006.

## **VI. SUMMARY OF CLAIMED SUBJECT MATTER**

Appellant believes that a brief discussion of the background technology, followed by a brief summary of the embodiments of the invention and the problems solved by the embodiments of the present invention, will assist the Board of Patent Appeals and Interferences (hereinafter referred to as

Patent Appeals and Interferences (hereinafter referred to as "the Board") in appreciating the significant advances made by the embodiments of the present invention. Finally, concise explanations of each of the independent claims is provided, including reference to exemplary portions of the specification and figures.

#### **A. The Background**

In existing systems radio programming is traditionally broadcast from transmitters designed to cover a relatively large, but finite, geographic area. Receivers outside of the geographic area are not able to receive the radio programming. This is a disadvantage for listeners, who are unable to receive the programming, and for advertisers, who are unable to reach markets beyond the broadcast area.

In addition, providing digital radio programming is expensive. For example, digital radio broadcast requires expensive new equipment as there is no existing infrastructure for digital radio broadcast. In addition, current systems do not allow for new methods of generating income. Existing systems do not provide enough revenue to warrant the expense of providing digital radio broadcasts.

Another drawback of existing systems is that current radio systems are restricted to very localized transmissions because

of, among other things, the limitations on broadcast bandwidth. This limits the number of radio stations that can broadcast in any given geographic region.

**B. Explanation of Independent Claim 1**

A receiver for receiving a radio programming signal broadcast over a cellular transmission network, the receiver comprising:

an input for receiving the radio programming signal  
(e.g., Figure 2, #224);

an audio output for delivering an audible portion of the radio programming signal (e.g., Figure 2, #226);

transmission means for transmitting the radio programming signal to a second receiver configured to: (1) deliver an audible portion of the radio programming signal, and (2) retransmit the radio programming signal (e.g., Figure 3, #330); and

processor means for processing the radio programming signal (e.g., Figure 3, #340).

**C. Explanation of Independent Claim 11**

A method for retransmitting a received radio programming signal, comprising the steps of:

receiving the signal over a cellular transmission network at a first transceiver station configured to output the radio

programming signal (Figure 4, #490, #470 and #416); and

transmitting the signal from the first transceiver station to at least a second transceiver station configured to output the radio programming signal (Figure 4, #490, #470 and #416).

#### **D. Explanation of Independent Claim 16**

A system for receiving and transmitting a radio programming signal over a cellular transmission network, comprising:

input means for receiving the radio programming signal (e.g., Figure 2, #224);

output means for delivering the radio programming signal (e.g., Figure 2, #226);

transmission means for transmitting the radio programming signal to at least one device configured to: (1) deliver the radio programming signal, and (2) retransmit the radio programming signal (e.g., Figure 3, #330); and

processing means for processing the radio programming signal (e.g., Figure 3, #340)..

#### **VII. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

The issues on appeal are whether the following rejections are proper: (1) the rejection under 35 U.S.C. § 102(e) of Claims 11-15 and 21 based on U.S. Publication No. 2002/0132575 to Kesling ("Kesling"), and (2) the rejection under 35 U.S.C. §

103(a) of claims 1, 2-10, 16-20, 22-25 based on Lee (U.S. Patent No. 6,728,531) or Kesling in view in view of Timm (U.S. Patent No. 4,435,845), Sklar (U.S. Patent No. 5,990,928), Mauro, II (U.S. Publication No. 2002/0103003), and/or Heilferich (U.S. Patent No. 6,462,646).

#### VIII. ARGUMENT

##### A. The Rejection Under 35 U.S.C. § 102(e) of Claims 11-15 and 21 Based on Kesling is Improper

On page 1 of the Office Action, claims 11-15 and 21 were rejected under 35 U.S.C. § 102(e) as being anticipated by Kesling. This rejection is hereby respectfully traversed.

Under 35 U.S.C. § 102, the Patent Office bears the burden of presenting at least a prima facie case of anticipation. In re Sun, 31 USPQ2d 1451, 1453 (Fed. Cir. 1993) (unpublished).

Anticipation requires that a prior art reference disclose, either expressly or under the principles of inherency, each and every element of the claimed invention. Id. "In addition, the prior art reference must be enabling." Akzo N.V. v. U.S.

International Trade Commission, 808 F.2d 1471, 1479, 1 USPQ2d 1241, 1245 (Fed. Cir. 1986), cert. denied, 482 U.S. 909 (1987).

That is, the prior art reference must sufficiently describe the claimed invention so as to have placed the public in possession of it. In re Donohue, 766 F.2d 531, 533, 226 USPQ 619, 621 (Fed. Cir. 1985). "Such possession is effected if one of ordinary

skill in the art could have combined the publication's description of the invention with his own knowledge to make the claimed invention." Id..

Regarding claims 11 and 21, the Examiner asserts that Kesling discloses a method for retransmitting a received radio programming signal (paragraph 0012, and paragraph 0040), comprising the steps of: receiving the signal over a cellular transmission network through a gateway (fig. 3 number 1110) from a content provider (fig. 3 number 1120) or web distribution hub (fig. 3 number 1170) (paragraph 0048 and paragraph 0073 line 1 through paragraph 0076 line 10) at a first transceiver station (satellite) configured to output the radio programming signal (program content, music, information, advertisement, etc.) (Fig. 3 number 12 and paragraph 0039 through paragraph 40); and transmitting the signal from the first transceiver station (satellite) to at least a second transceiver station (radio receiver 20) (fig. 3 number 20 and paragraph 0040) configured to output the radio programming signal on a flash card media link (1140) to be read by reader connected to a computer (1150) (paragraph 0041).

Applicant respectfully submits, however, that Kesling does not teach or suggest the step of "receiving the signal over a cellular transmission network at a first transceiver station



configured to output the radio programming signal." In particular, Applicant respectfully submits that satellite 12 of Kesling cannot comprise the claimed "first transceiver station" because satellite 12 does not "receiv[e] the signal over a cellular transmission network," as expressly required by independent claim 11. Applicant respectfully submits that all embodiments disclosed by Kesling require the transmission of radio programming signals through a satellite transmission network. See, e.g., Abstract (A system and method of implementing mobile commerce in a "**satellite radio programming broadcasting system.**"); see also item 12 in Figures 1-4. Applicant respectfully submits that a satellite transmission network is not the same as a cellular transmission network. Accordingly Applicant respectfully submits that claim 11 is allowable over the cited references.

Claims 12-15 and 21 are dependent upon independent claim 11. Thus, since independent claim 11 should be allowable as discussed above, claims 12-15 and 21 should also be allowable at least by virtue of their dependency on independent claim 11. Moreover, these claims recite additional features which are not claimed, disclosed, or even suggested by the cited references taken either alone or in combination. For example, claim 21 recites "wherein the radio programming signal is transmitted to

the cellular transmission network by a radio programming source through a data network or gateway." Applicant respectfully submits that because Kesling does not teach or suggest receiving the signal over a cellular transmission network at a first transceiver station configured to output the radio programming signal," as required by claim 11, it does not therefore teach or suggest "wherein the radio programming signal is transmitted to the cellular transmission network by a radio programming source through a data network or gateway."

In view of the foregoing, it is respectfully requested that the aforementioned anticipation rejection of claims 11-15 and 21 be withdrawn.

**B. The Rejection Under 35 U.S.C. § 103(a) claims 1, 2-10, 16-20, 22-25 based on Lee or Kesling in view of Timm, Sklar, Mauro, II and/or Heilferich is Improper**

On page 2 of the Office Action, claims 1, 5-8, 22 and 23 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Lee (U.S. Patent No. 6,728,531) in view of Timm (U.S. Patent No. 4,435,845). On page 4 of the Office Action, claims 2-4 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Lee in view of Timm and further in view of Sklar (U.S. Patent No. 5,990,928). On page 6 of the Office Action, claim 9 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Lee, in view of Timm and Sklar, and further in view of Mauro, II

(U.S. Publication No. 2002/0103003). On page 5 of the Office Action, claim 10 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Lee, in view of Timm and Sklar, and further in view of Heilferich (U.S. Patent No. 6,462,646). On page 6 of the Office Action, claims 16-19, 24 and 25 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Kesling in view of Timm. On page 7 of the Office Action, claim 20 was rejected under 35 U.S.C. §103(a) as being unpatentable over Kesling, in view of Timm, Sklar and further in view of Mauro II. These rejections are hereby respectfully traversed.

As stated in MPEP § 2143, to establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

Regarding claims 1, the Examiner asserts -- and Applicant agrees -- that Lee does not disclose transmission means for transmitting the radio programming signal to a second receiver configured to deliver an audible portion of the radio

programming signal and retransmit the radio programming signal. Regarding claim 16, the Examiner asserts -- and Applicant agrees -- that Kesling does not disclose transmitting the radio programming signal to at least one device configured to deliver the radio programming signal and retransmit the radio programming signal. However, in both cases, the Examiner asserts that "Timm teaches an automobile radio-cassette unit for FM radio stereo reception which provides broadcast announcements to a speaker 14 and earphones (KH1 and KH2) (col. 4, line 54 through col. 5, line 36), the earphone are infrared wireless connection to the automobile radio cassette unite (col. 5, lines 56 through col. 5, line 2)." The Examiner further asserts that Sklar teaches a moving receiver capable of receiving a broadcast signal and distribute (retransmit) the broadcast signal to passengers seat stations or terminals (abstract, col. 2, lines 40-50 and col. 7, line 10 through col. 8, line 16). Therefore, the Examiner submits, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Lee's vehicle radio with transmission means for transmitting the radio programming signal to a second receiver configured to deliver an audible portion of the radio programming signal in order for the multimedia device to allow passengers of the vehicle to receive AM/FM music, video and

television in private, so that additional passengers are not disturbed, as taught by Timm and Sklar. The Examiner also alleges that it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide Kesling with transmitting the radio programming signal to at least one device configured to deliver the radio programming signal to at least one device configured to deliver the radio programming signal and retransmit the radio programming in order for the system to broadcast a program content to the radio receiver within the vehicle to a passenger entertainment console and headset so that the passenger could listen to the program content in private, so that other passengers within the vehicle are not disturbed.

However, Applicant respectfully submits that Sklar does not teach or suggest "transmission means for transmitting the radio programming signal to a second receiver configured to: (1) deliver an audible portion of the radio programming signal, and (2) retransmit the radio programming signal." Rather, Applicant respectfully submits that Sklar merely teaches a receiver that distributes programming to passengers on an aircraft, not a feature or functionality for transmitting a radio programming signal to a second receiver configured to deliver an audible portion of the radio programming signal and retransmit the radio

programming signal:

The present invention is embodied in a method and apparatus for receiving broadcast entertainment transmissions at a moving receiver station, wherein the broadcast can originate from several different program providers. Preferably, the moving receiver station is embodied in an in-flight aircraft entertainment system that incorporates a satellite receiver station and distribution system. The in-flight receiver station receives television signals broadcast from a satellite, and distributes the received television programming to passengers on the aircraft.

See Sklar, Col. 2, lines 40-49

Further, Applicant respectfully submits that Timm is similarly deficient and merely discloses an "automobile radio-cassette combination which includes a special announcement decoder . . . to decode traffic announcements and the like." See Timm, Abstract.

Accordingly, Applicant respectfully submits that neither Timm nor Sklar - alone or in combination - teach or suggest "transmission means for transmitting the radio programming signal to a second receiver configured to: (1) deliver an audible portion of the radio programming signal, and (2) retransmit the radio programming signal," as expressly recited in independent claims 1 and 16. Among other things, Timm and Sklar, for example, fail to teach or suggest the retransmission of the radio programming signals, as required by independent claims 1 and 16.

Moreover, Applicant respectfully submits that one of ordinary skill in the art would not be motivated to combine Lee/Kesling, Timm and/or Sklar to achieve the claimed systems and methods. First, Applicant respectfully submits that Lee/Kesling, Timm and Sklar do not, as a whole, teach or suggest the *desirability*, and thus the obviousness, of making the combination. Kesling, for example, relates to a system and method for mobile commerce, and thus would not benefit from incorporating Timm's automobile radio and tape cassette switching apparatus, and/or Sklar's method and apparatus for receiving broadcast entertainment transmissions at a moving receiver station. Lee's method and apparatus for remotely configuring a wireless communication device also fails to teach or suggest the desirability of the proposed combination. Second, even if the three references were combined, Applicant respectfully submits that they would not achieve the specific systems and methods recited in independent claims 1 and 16. Accordingly, Applicant respectfully submits that independent claims 1 and 16 are allowable over the cited references.

Claims 2-10 and 17-20 are dependent upon independent claim 1 or 16. Thus, since independent claim 1 and 16 should be allowable as discussed above, claims 2-10 and 17-20 should also be allowable at least by virtue of their dependency on

independent claim 1 or 16. Moreover, these claims recite additional features which are not claimed, disclosed, or even suggested by the cited references taken either alone or in combination. For example, claim 2 recites the receiver of claim 1 "wherein the processor means comprises an RF module for processing and re-transmitting the radio broadcast signal." Applicant respectfully submits that none of the cited references, alone or in combination, teach or suggest the receiver of claim 1 wherein the processor means comprises an RF module for processing and re-transmitting the radio broadcast signal.

In view of the foregoing, it is respectfully requested that the aforementioned obviousness rejection of claims 1, 2-10, 16-20, 22-25 be withdrawn.

#### **IX. CONCLUSION**

In view of the foregoing, it is respectfully submitted that the present application is in condition for allowance, and an early indication of the same is courteously solicited.

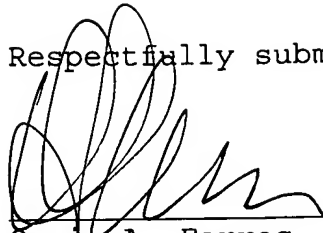
To the extent necessary, a petition for an extension of time under 37 CFR § 1.136 is hereby made.

Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 50-0206, and please credit any excess fees



to the same deposit account.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Ozzie A. Farres', written over a horizontal line.

October 17, 2006

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## APPENDIX A - CLAIMS

1. A receiver for receiving a radio programming signal broadcast over a cellular transmission network, the receiver comprising:

an input for receiving the radio programming signal;

an audio output for delivering an audible portion of the radio programming signal;

transmission means for transmitting the radio programming signal to a second receiver configured to: (1) deliver an audible portion of the radio programming signal, and (2) retransmit the radio programming signal; and

processor means for processing the radio programming signal.

2. The receiver of claim 1 wherein the processor means comprises an RF module for processing and re-transmitting the radio broadcast signal.

3. The receiver of claim 1 wherein the processor means comprises a digital decoder module for decoding and processing digital signals embedded in the radio programming signal.

4. The receiver of claim 1 wherein the processor means comprises an audio decoder module for decoding and processing audio signals embedded in the radio programming signal.

5. The receiver of claim 1 further comprising a memory means for storing at least a portion of the radio programming signal.

6. The receiver of claim 5 wherein the memory means comprises Random Access Memory (RAM) for buffering data related to the radio programming signal.

7. The receiver of claim 5 wherein the memory means comprises persistent memory for storing data and voice data related to the radio programming signal.

8. The receiver of claim 1 wherein the processor means further comprises a processor for running software and for voice processing.

9. The receiver of claim 1 further comprising software supporting the playback of audio formats such as MP3 and WAV.

10. The receiver of claim 1 further comprising a video output for delivering a video portion of the radio programming signal.

11. A method for retransmitting a received radio programming signal, comprising the steps of:

receiving the signal over a cellular transmission network

at a first transceiver station configured to output the radio programming signal; and

transmitting the signal from the first transceiver station to at least a second transceiver station configured to output the radio programming signal.

12. The method of claim 11 further comprising the step of processing the signal at the first transceiver station prior to retransmitting.

13. The method of claim 11 wherein the second transceiver station comprises a stereo system.

14. The method of claim 11 wherein the second transceiver station comprises a car radio.

15. The method of claim 11 wherein the first transceiver station further comprises an infrared link.

16. A system for receiving and transmitting a radio programming signal over a cellular transmission network, comprising:

input means for receiving the radio programming signal;

output means for delivering the radio programming signal;

transmission means for transmitting the radio programming

signal to at least one device configured to: (1) deliver the radio programming signal, and (2) retransmit the radio programming signal; and

processing means for processing the radio programming signal.

17. The system of claim 16 wherein the transmission means comprises an RF module.

18. The system of claim 16 wherein the transmission means comprises an infrared link.

19. The system of claim 16 wherein the processor means comprises a processor.

20. The system of claim 16 wherein the processor means further comprises software supporting the playback of audio formats such as MP3 and WAV.

21. The method of claim 11 wherein the radio programming signal is transmitted to the cellular transmission network by a radio programming source through a data network or gateway.

22. The receiver of claim 1 wherein the input receives the radio programming signal over the cellular transmission network.

23. The receiver of claim 1 wherein the transmission means transmits the radio programming signal wirelessly.

24. The system of claim 16 wherein the input receives the radio programming signal over the cellular transmission network.

25. The system of claim 16 wherein the transmission means transmits the radio programming signal wirelessly.

## APPENDIX B - EVIDENCE

NONE

## APPENDIX C - RELATED PROCEEDINGS

NONE